

TOWN OF TIVERTON
ZONING BOARD OF REVIEW
MINUTES

WEDNESDAY, April 2, 2008
7:30 P.M.

The following petitions were received and were heard by the Tiverton Zoning Board of Review on Wednesday, April 2, 2008 at 7:30 p.m. at the Tiverton Town Hall, 343 Highland Road.

Members present: Chairman David Collins, Jay Jackson, Richard Taylor, Lise Gescheidt, Susan Krumholz and Raymond Lafazia (alternate).

Also present were: Peter Ruggiero, Town Solicitor, Sally Ferreira, Court Reporter and Gareth Eames, Building/Zoning Official.

1. A petition has been filed by Stephen Maher of Middletown, RI and Ann Daly of Portsmouth, RI requesting a variance to Article VIII, Section 3.d.1 and Article V, Section 1 of the Tiverton Zoning Ordinance in order to raze and existing dwelling and to construct a new single family dwelling located at 120 Forand Lane, Tiverton, RI being Block 113, Card 21S on Tiverton Tax Assessor's Maps whereby developing within 200 feet of Stafford Pond with less than required frontage allowed in a R60 zoning district.

DECISION: Ann Daly co-owner of 120 Forand Lane came before the Board and stated they are proposing to raze the existing structure and build a new structure. Ms. Daly further explained this property was purchased in 2004 and in 2005 she joined in with three other families and installed a common septic system which is in conformance and then attempted to do some renovation on the existing dwelling, however, it was uninhabitable because it didn't meet any of the building codes; floor joists were sitting on the dirt, there was no foundation.

Ms. Daly proceeded to explain the process she did with the Planning Board to do an Environmental Review Study which has been completed and a letter has been submitted. The Chairman confirmed there is such a letter from the Planning Board in the file. The Chairman asked Ms. Daly if the new house was going to be bigger and Ms. Daly responded the footprint is larger by 300 square feet. Ms. Daly stated there will only be two bedrooms which is a restriction by DEM because of the septic system and it is also stated on the deed which follows the property.

The Chairman noted the Planning Board letter states they would have a favorable recommendation contingent upon three events occurring (1) that the Zoning Board grant the variance, (2) receive a revised rain garden design and site plan and (3) approval from the administrative officer. Ms. Daly informed the Board that the revised rain garden and updated plan was reviewed and approved by the Planning Board. Ms. Daly went on to say that the new building will actually be set back further than the current building from the pond which resulted in an insignificant alteration by fresh water wetlands which have been recorded. Mr. Jackson asked Ms. Daly how much the variance is on the frontage and Ms. Daly responded it's currently 68.5 where 125 are required in a substandard lot. In summary Ms. Daly stated she was anxious to get started.

The Board went into Executive Session to discuss the matter. Ms. Krumholz stated this seems to be pretty reasonable and Ms. Gescheidt agreed to her statement. Ms. Krumholz made a motion to grant the variance less than 200 feet from Stafford Pond, that special circumstances exist which are particular to this property which require that the relief is not contrary to public interest and failing to grant this relief would be an unnecessary hardship on the applicant, that the hardship is not simply monetary hardship but in fact the inability to use the property in any sense and that granting this would not alter the character of the surrounding area. Ms. Gescheidt seconded with the finding that the unnecessary hardship wasn't caused by the applicant in any way. The vote was Unanimous. Voting were: Chairman Mr. Collins, Mr. Jackson, Ms. Gescheidt, Ms. Krumholz and Mr. Taylor.

2. A petition has been received by Roland G. Vigeant of 22 Primrose Drive, Riverside RI requesting a variance to Article V Section 1 of the Tiverton Zoning Ordinance in order to construct a new single family dwelling located at Ocean View Avenue, Tiverton, RI being Block 45 Card 24 on Tiverton Tax Assessor's Maps closer to the front yard setback than is currently allowed in a R30 zone.

DECISION: Attorney Turner Scott from Newport appeared on behalf of the petitioners. Attorney Scott stated he reviewed the transcript from the last hearing and noted the board members present at that time as indicated in the transcript were Chairman David Collins, Mr. Taylor, Mr. Jackson, Ms. Gescheidt, Mr. Lafazia and Mr. Fairhurst with Mr. Fairhurst being absent this evening but those would be the voting members tonight. Mr. Ruggiero stated these would be the members voting tonight absent Mr. Fairhurst just on this petition.

Attorney Scott stated there were three issues the Board requested the petitioner get more information on and those were (1) the merger of lot issue, (2) the drainage issue and (3) the height issue. Ms. Geraldine Feldman who is the owner of the lot was called as a witness. Ms. Feldman went on to testify and stated she has owned this lot since 1986. Attorney Scott marked two deeds as exhibits at this point along with other exhibits throughout the evening.

Attorney Scott called Kamal Hingorany of Narragansett Engineering, 3102 East Main Road, Portsmouth, Rhode Island who is a registered professional engineer and a registered land surveyor in the State of Rhode Island as his next witness. The Board accepted Mr. Hingorany as an expert witness as a professional engineer. Mr. Hingorany testified that he had the opportunity to review this lot and designed the septic system. Attorney Scott marked the approved ISDS as an exhibit. Mr. Hingorany went on to say that he revisited the lot and designed a plan regarding the drainage. Attorney Scott asked Mr. Hingorany to explain the water flow what happens now with the property and then what is going to happen after this house is built. Mr. Hingorany went on to explain the site plan. One of the things proposed was to direct all of the roof drainage into the catch basin that by doing this it was his opinion this would reduce 30% percent of water flow going on lot number 19. Attorney Scott asked Mr. Hingorany where the water ends up and Mr. Hingorany stated it ends up down on Ford Farm Road into a catch basin into the detention pond. Mr. Hingorany also stated there is extensive ledge on this lot and the only place to put the septic system is where he designed it.

Attorney Scott called Roland Vigeant as his next witness. Mr. Vigeant testified that he talked to the North Tiverton Water Department to see if there was water available on this lot and he presented the Board with a letter. The letter from the North Tiverton Water Department was marked as an exhibit. Attorney Scott asked Mr. Vigeant since the last hearing if he had an opportunity to speak to the building official about the height restriction and Mr. Vigeant stated he had and as a result of that discussion they came to the conclusion he needs three and a half feet of relief. Mr. Vigeant went on to say he spoke to the DPW Director about the drainage issue. A letter from DPW was marked as an exhibit. Many neighbors appeared before the Board and expressed their concerns. One neighbor stated her view would be nonexistent if a house were built there.

In summary, Attorney Scott stated this house is going to be a reasonable sized house given the area and it will not destroy the character of the neighborhood. It will take away from the traffic problems that people have by providing another place to back into. Attorney Scott went on to say there is nothing in the zoning ordinances that talks about taking away someone's view that if the neighbors wanted to keep the property the way it is that they could have purchased it. He also stated the variances being requested are reasonable variances that it's the minimum variance to make reasonable use of the property and the applicants have met the burdens by going out and having the drainage looked at.

The Board went into Executive Session to discuss the matter. Ms. Gescheidt made a motion to grant the variance on the front yard setback and stated that she certainly appreciates how the neighbors feel but the applicant has a right to build a house there, that no one wants a house built across the street from them that's going to destroy their view but the Board can't prohibit somebody from building because of that reason because that would take away their ownership rights. Ms. Gescheidt went on to say it would be an unnecessary hardship for the applicant not to be able to exercise his rights were he to buy the property, that there are a lot of two-story houses in that neighborhood and granting the three and-a-half foot variance will not destroy the character of the neighborhood over the height requirement. There are special conditions that exist because of the topography of the land because the house will be built on partial ledge

and there's a very steep drop. Ms. Gescheidt stated it is not contrary to the public interest, that it's not going to change the general character of the property surrounding that area because there are two-story houses there and it's the least variance that the applicant is requesting, that it may not even be necessary for him to exercise the use of that variance if the ledge situation is not as anticipated it's to be. Ms. Gescheidt also stated if the Board were to deny the applicant this variance, a single family one floor house would destroy the view of the neighbors and they would have the same objection. Mr. Taylor seconded and amended the motion with the condition that there will be no blasting. Ms. Gescheidt accepted that amendment. The vote was four to one with Mr. Lafazia abstaining. Voting in favor were: Chairman David Collins, Ms. Gescheidt, Mr. Taylor and Mr. Jackson.

Ms. Gescheidt made a motion to grant the special use permit to exceed the height restriction for the reasons previously stated. Mr. Taylor seconded and amended the motion to include the condition that there will be no blasting. The vote was four to one with Mr. Lafazia abstaining. Voting in favor were: Chairman David Collins, Ms. Gescheidt, Mr. Taylor and Mr. Jackson.

3. A petition has been received by Roland G. Vigeant of 22 Primrose Drive, Riverside RI requesting a special use permit from Article VII Section 4.b. of the Tiverton Zoning Ordinance in order to construct a new single family dwelling at Ocean View Avenue, Tiverton, RI being Block 45 Card 24 on Tiverton Tax Assessor's Maps higher than allowed in a R30 zone.

DECISION: Attorney Turner Scott from Newport appeared on behalf of the petitioners. Attorney Scott stated he reviewed the transcript from the last hearing and noted the board members present at that time as indicated in the transcript were Chairman David Collins, Mr. Taylor, Mr. Jackson, Ms. Gescheidt, Mr. Lafazia and Mr. Fairhurst with Mr. Fairhurst being absent this evening but those would be the voting members tonight. Mr. Ruggiero stated these would be the members voting tonight absent Mr. Fairhurst just on this petition.

Attorney Scott stated there were three issues the Board requested the petitioner get more information on and those were (1) the merger of lot issue, (2) the drainage issue and (3) the height issue. Ms. Geraldine Feldman who is the owner of the lot was called as a witness. Ms. Feldman went on to testify and stated she has owned this lot since 1986. Attorney Scott marked two deeds as exhibits at this point along with other exhibits throughout the evening.

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on to say that he revisited the lot and designed a plan regarding the drainage. Attorney Scott asked Mr. Hingorany to explain the water flow what happens now with the property and then what is going to happen after this house is built. Mr. Hingorany went on to explain the site plan. One of the things proposed was to direct all of the roof drainage into the catch basin that by doing this it was his opinion this would reduce 30% percent of water flow going on lot number 19. Attorney Scott asked Mr. Hingorany where the water ends up and Mr. Hingorany stated it ends up down on Ford Farm Road into a catch basin into the detention pond. Mr. Hingorany also stated there is extensive ledge on this lot and the only place to put the septic system is where he designed it.

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In summary, Attorney Scott stated this house is going to be a reasonable sized house given the area and it will not destroy the character of the neighborhood. It will take away from the traffic problems that people have by providing another place to back into. Attorney Scott went on to say there is nothing in the zoning ordinances that talks about taking away someone's view that if the neighbors wanted to keep the property the way it is that they could have purchased it. He also stated the variances being requested are reasonable variances that it's the minimum variance to make reasonable use of the property and the applicants have met the burdens by going out and having the drainage looked at.

The Board went into Executive Session to discuss the matter. Ms. Gescheidt made a motion to grant the variance on the front yard setback and stated that she certainly appreciates how the neighbors feel but the applicant has a right to build a house there, that no one wants a house built across the street from them that's going to destroy their view but the Board can't prohibit somebody from building because of that reason because that would take away their ownership rights. Ms. Gescheidt went on to say it would be an unnecessary hardship for the applicant not to be able to exercise his rights were he to buy the property, that there are a lot of two-story houses in that neighborhood and granting the three and-a-half foot variance will not destroy the character of the neighborhood over the height requirement. There are special conditions that exist because of the topography of the land because the house will be built on partial ledge and there's a very steep drop. Ms. Gescheidt stated it is not contrary to the public interest, that it's not going to change the general character of the property surrounding that area because there are two-story houses there and it's the least variance that the applicant is requesting, that it may not even be necessary for him to exercise the use of that variance if the ledge situation is not as anticipated it's to be. Ms. Gescheidt also stated if the Board were to deny the applicant this variance, a single family one floor

house would destroy the view of the neighbors and they would have the same objection. Mr. Taylor seconded and amended the motion with the condition that there will be no blasting. Ms. Gescheidt accepted that amendment. The vote was four to one with Mr. Lafazia abstaining. Voting in favor were: Chairman David Collins, Ms. Gescheidt, Mr. Taylor and Mr. Jackson.

Ms. Gescheidt made a motion to grant the special use permit to exceed the height restriction for the reasons previously stated. Mr. Taylor seconded and amended the motion to include the condition that there will be no blasting. The vote was four to one with Mr. Lafazia abstaining. Voting in favor were: Chairman David Collins, Ms. Gescheidt, Mr. Taylor and Mr. Jackson.

4. A petition has been filed by Bryan N. Sanford, Jr. of 84 Cynthia Avenue, Tiverton, RI appealing a decision of the Tiverton Building/Zoning Official to issue a notice of violation dated January 28, 2008 to cease and desist construction of a new single family dwelling located at Cornell Road (0 Crandall Road) Tiverton, RI being Map 4-8 Block 140 Card 4 on Tiverton Tax Assessor's Maps and located in a R80 zone.

DECISION: Attorney Christopher Murphy from Armstrong, Gibbons & Nyse appeared on behalf of the petitioner and stated they were contesting the cease and desist order that was issued. Attorney Murphy called Mr. Sanford to testify. Mr. Sanford went on to give extensive testimony. Exhibits were marked. Mr. Sanford stated he purchased all the materials for the walls of the insulated concrete forms and entered into a contract with a builder and obtained financing through a bank. Mr. Sanford said the Building Official issued a cease and desist order and all construction was stopped due to the fact he could not obtain access to the site because there was no road built to make a first inspection. Attorney Murphy drew the Board's attention to a newspaper article and read "the work on Cornell Road to make it passable to 700 feet southerly from Bulgarmarsh Road was approved by a four to six vote by the Tiverton Town Counsel." Mr. Sanford stated the material placed at the site is being ruined by the elements.

Ms. Gescheidt reminded Mr. Sanford that it was his obligation to know what the ordinances are before he proceeds with construction. Mr. Sanford answered Ms. Gescheidt by stating the ordinance he read states that no permit shall be issued if the ordinances are not complied with and a permit was issued. Attorney Murphy commented the job of the Building Official is when he gets a building permit, to review it and if it's in compliance he either approves or denies the building permit.

Attorney Murphy called Gareth Eames, the Building/Zoning Official to testify. Mr. Eames went on testify. Mr. Eames stated he gives every applicant who is issued a permit a checklist and the first item on the list is a bottom inspection for the foundation. This checklist was marked as an exhibit. Mr. Eames stated nothing should be constructed at this point in case there is an error so the applicant is not out a lot of money. Mr. Eames went on to say when he went out to do this bottom inspection, he could not get up the road and it was at that point that he notified the owner he was going to issue a stop work

order, however, the applicant continued to work and put a foundation or a partial foundation in place. Mr. Eames did state in hindsight in looking at the application, this should have been for an address on Roy Street not Cornell Road but there is not a constructed road on either the two choices for frontage. Mr. Eames went on to further state his reason for this opinion. Mr. Ruggiero, the town solicitor, asked Mr. Eames what he would require in order to issue a building permit at this site and Mr. Eames answered that he would require that a road be built to town specified standards as required in the zoning ordinance across the proposed complete frontage with a T turnaround.

Ms. Patricia Sylvester, Ms. Barbara Martin and Mr. James Spears representing the Tiverton Land Trust were sworn in and gave testimony. Ms. Sylvester stated that the Land Trust is in the process of getting their land surveyed to ensure that all the surveys are consistent and the boundaries are in the same place. Mr. Ruggiero informed Ms. Sylvester the question before the Board tonight is whether this house should be built on this lot under these conditions and whether the Petitioner should be allowed to finish the house and the issue of an approved road in front of the house. Mr. Ruggiero went on to say if the Land Trust is raising an issue about whether the house is in the proper set backs or is encroaching on the Land Trust property, the Board cannot take any action absent some evidence. Ms. Sylvester requested that the Board continue this matter until the survey is completed because it would be in everyone's best interest to know exactly where the lines are.

The Board went into Executive Session to discuss the matter. In answer to a question Ms. Gescheidt posed, Mr. Ruggiero stated the Board sits in the shoes of the Building Official and the Board can act as if they were processing this application for a building permit tonight and that action could be to sustain the cease and desist order to keep it in place, or to overturn it and allow the applicant to proceed or continue this matter if the Board needs further information.

Mr. Lafazia asked Attorney Murphy if there was a problem with this matter being continued and Attorney Murphy replied that his client would like some finality and if need be appeal to the Superior Court. Mr. Sanford replied the material on the property is going to be ruined. Attorney Murphy asked if the Board would be willing to entertain a decision to the effect that they'll temporarily remove the cease and desist and not issue a certificate of occupancy until this frontage issue is resolved, that his client will be able to live with that. Mr. Ruggiero cautioned the Board to just make a decision because if the Board allow construction to proceed and then there's an adverse ruling against this applicant, it may expose the town to liability later because there's going to be more money spent. Mr. Taylor asked Mr. Eames in order for the applicant to comply with the ordinance he would have to bring Roy Street up to standards and Cornell Road all the way to where it meets the paved section and Mr. Eames responded that's what he believes. Mr. Taylor made a motion to uphold the decision of the Building/Zoning Official that there's a clear reason for requiring approved roads in front of lots being developed for emergency vehicles and for a lot of different reasons and as part of good planning. Mr. Jackson seconded. The vote was unanimous. Voting were: Chairman David Collins, Ms. Gescheidt, Mr. Jackson, Mr. Taylor and Ms. Krumholz.

5. A petition has been filed by Therese L. Holland of 949 Neck Road, Tiverton, RI requesting a variance to Article V Section 1 of the Tiverton

Zoning Ordinance in order to raze the existing dwelling and to construct a new single family dwelling at 364 Riverside Drive, Tiverton, RI being Map 6-7 Block 56 Card 1 on Tiverton Tax Assessor's Maps closer to the front and rear yard setback than is currently allowed in a R40 zone.

DECISION: Jeremiah Holland, the tenant at the property and the son of the present owner, appeared along with the owner before the Board. Mr. Holland stated they have talked to several contractors about whether the house could be repaired but it's almost a hundred years old and it's on an old slab and the house is in pretty tough shape. Mr. Holland went on to say they want to rebuild on the exact same footprint where the current property stands. Mr. Holland would like to be able to fix it up but it financially does not make any sense. Mr. Holland also stated he needs approximately 15 feet of relief on the front and on the rear he needs close to 38 feet. Mr. Holland informed the Board they have retained an architect and they have designed a house they feel fits in well with the neighborhood. Ms. Gescheidt asked the applicant if a new septic system needs to be put in and the applicant stated the current septic is approved by DEM. Mr. Jackson asked if there will be a new foundation and Mr. Holland answered yes, they will be putting in a new foundation because the existing house sits on an old slab. There were no neighbors present opposing this petition.

The Board went into Executive Session. Ms. Krumholz made a motion to grant the variance for the front and rear setback, that testimony indicates that there is no other way to put a house on this lot without acquiring a variance, that it is going in the exact same footprint of the existing home and that in granting the variance won't alter the character of the neighborhood or be contrary to public interest in anyway and that this is the least variance that can be granted and the reason for it it's not because of any effort of or any action of the applicant but simply because of the circumstances of the property. Ms. Gescheidt seconded. The vote was unanimous. Voting were: Chairman David Collins, Ms. Gescheidt, Ms. Krumholz, Mr. Jackson and Mr. Taylor.

- 6 . A petition has been filed by Scott Neville, Manager of The Tin Man LLC, 3940 Main Road, Tiverton, RI requesting an extension or ruling that the variance permission has been exercised as per Article XV, Section 5.c. of the Tiverton Zoning Ordinance for the property known as 3940 Main Road, Tiverton, RI being Map 2-3, Block 125, Card 14 on Tiverton Tax Assessor's Maps and located in a R80 zone.

DECISION: This petition was called; however, no one was present to represent the applicant. Mr. Taylor made a recommendation to deny based on the nonappearance and the applicant didn't inform the Board they weren't coming. The Chairman stated he does not think it's fair to deny this petition without knowing why they're not here because they could be in the hospital.

Mr. Eames stated it was his impression that Mr. Neville has made steps in order to do the project, although he hasn't yet gotten to the point where he can pull a building permit, he has taken steps to do the project. Mr. Lafazia stated he has seen activity

there so it's not abandoned. Mr. Jackson made a motion to continue this matter to next month and

have a representative for the applicant state their case. Ms. Gescheidt seconded. The vote was four to one. Voting in favor were: Chairman David Collins, Ms. Krumholz, Ms. Gescheidt and Mr. Jackson. Opposed was: Mr. Taylor.

ADMINISTRATIVE ISSUES:

Mr. Taylor made a motion to approve the minutes of the last meeting as written. Mr. Jackson seconded. Ms. Krumholz abstained due to the fact she was not present at last month's meeting. Voting were: Chairman David Collins, Ms. Gescheidt, Mr. Jackson and Mr. Taylor.

Ms. Krumholz made a motion to adjourn. Mr. Jackson seconded. The vote was unanimous. Voting were: Chairman David Collins, Ms. Gescheidt, Mr. Jackson, Mr. Taylor and Mr. Lafazia.

(Whereupon the Zoning Board of Review meeting ended at 10:54 p.m.)

ZBR/ssf

C E R T I F I C A T E

I, Salvina S. Ferreira, Registered Professional Reporter, hereby certify that the foregoing pages, 1 – 11, in the matter of Zoning Board of Review Minutes held on Wednesday, April 2, 2008 are transcribed to the best of my knowledge, skill and ability.

I further certify that I am not interested in the event of the action.

IN WITNESS WHEREOF, I have hereunto subscribed my hand and affixed my seal of office this 30thth day of April, 2008.

Salvina S. Ferreira, RPR

My commission expires: September 26, 2009.

LEDGEWOOD COURT REPORTING
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